

This page
was intentionally
left blank



Pharmacy Scams Busted





Pharmacy Scams Busted by OIFP's Medicaid Fraud Section

by John Krayniak

The Medicaid Fraud Section of the Office of the Insurance Fraud Prosecutor (OIFP) counted numerous crooked pharmacists among those it successfully investigated and prosecuted in 2003. It also successfully targeted a variety of other scams perpetrated by dishonest providers of medical goods and services to bilk our State's Medicaid Program of hundreds of millions of dollars. Because losses to the Program resulting from such scams are ultimately paid by taxpayer dollars, these fraud artists "pick our pockets" every time they succeed in obtaining reimbursement for a phony bill.

The New Jersey Medicaid Program contracts with five Managed Care Organizations (MCOs) to provide Medicaid benefits to beneficiaries living in certain geographical areas and is required to provide the same level of service of care, including pharmaceutical products, that the Medicaid fee-for-service program provides. The State pays

the MCOs a negotiated amount for each beneficiary each month called a "capitation rate." The MCOs provide most pharmaceutical products as part of the capitation rate. However, expensive drugs are excluded, or carved out, of the capitation rate and the State pays the MCO the equivalent of the fee-for-service costs.

OIFP's Medicaid Fraud Section has responsibility for investigating and prosecuting all types of fraud against the Medicaid Program. Of the many types of fraud that people try to commit against New Jersey's Medicaid Program, frauds involving prescription drugs are among the most common and costly. Pharmaceutical costs to the New Jersey Medicaid Program exceeded \$738,000,000 in 2002. While Congress hotly debated extending prescription drug benefits to Medicare beneficiaries over the past year, the Medicaid Fraud Section of OIFP was actively engaged in combating all man-



Pharmacy Scams Busted

ners of fraud involving pharmaceutical products. In 2003, the Medicaid Fraud Section routinely encountered pharmacists who scheme to steal from the Medicaid Program in a variety of ways.

Some of the scams crooked pharmacists, in particular, have attempted, include billing for "refills" of prescriptions which patients have not refilled, billing Medicaid for phony, fictitious or forged prescriptions never ordered by any physician, billing Medicaid for the full cost of prescription drugs purchased by pharmacists on the "black market" for far less than their fair market value, billing for unfilled or abandoned prescriptions, and billing for extremely costly prescription medicines which are not medically warranted.

The Medicaid Fraud Section's enforcement efforts in 2003 included actions against pharmaceutical manufacturers, retail pharmacies and registered pharmacists and individuals who used Medicaid cards to pay for expensive

medications on forged prescriptions. These efforts resulted in the recovery of \$6,017,371, the conviction of seven individuals, including three registered pharmacists, and the imposition of sentences which included two commitments to State prison. Two of the three registered pharmacists who were convicted also lost their pharmacist licenses for a minimum period of one year at the time of sentencing and each was referred to the Board of Pharmacy for further licensing action.

In one of the most significant criminal court decisions of 2003, New Jersey's Appellate Court upheld the conviction and jail sentence of Mohammad Saleem Malik, the mastermind of a Medicaid kickback scheme. Ruling in favor of the State, the Court held that New Jersey's corporate misconduct statute, N.J.S.A. 2C:21-9c, applied to Malik's misdeeds when he used Venditti Laboratory, a corporation, to pay co-conspirators more than \$300,000 in kickbacks to

secure lab billings from the Medicaid Program worth more than \$1,000,000. Malik had been sentenced to five years in State prison for the scam.

The following cases illustrate some of the Medicaid Fraud Section's enforcement efforts in 2003 addressing frauds by pharmacists, or involving overbilling for prescription drugs:

Steven Aberbach, a registered pharmacist and owner of the Springfield Pharmacy in Union County, pled guilty in December to committing health care claims fraud by billing Medicaid for prescriptions he did not dispense to Medicaid beneficiaries. Aberbach also executed a Consent Order pursuant to which he agreed to pay \$100,000 in restitution and a \$100,000 false claims penalty to the Medicaid Program. He also surrendered his license as a Registered Pharmacist and was debarred as a Medicaid provider for 12 years. He was scheduled for sentencing early in 2004.

Kwadwo Osei Agyemang, a registered pharmacist, was sentenced to two years probation and ordered to pay \$27,000 in restitution and an additional \$27,000 in penalties to the Medicaid Program. Agyemang was also debarred from the Medicaid Program for a minimum period of five years. Agyemang was the owner and registered pharmacist in charge of Victory Pharmacy in Newark, New Jersey. He admitted that he billed the Medicaid Program for prescription drugs that were not dispensed.

Registered pharmacist, **Jennifer Kim**, the owner of Medicine Shop Pharmacy located in North Arlington, pled guilty to one count of Medicaid fraud. She admitted that she defrauded the Medicaid Program of over \$16,000 by billing for prescriptions that were never filled and never dispensed to Medicaid beneficiaries. She was sentenced to a term of probation and ordered to make restitu-

Springfield Pharmacy was used by its owner to bilk the Medicaid Program through false prescription billings.



tion to the Medicaid Program. Her license as a registered pharmacist was also suspended.

Adebowale Oyenusi, a registered pharmacist who was the president and sole owner of Quicksript Pharmacy in East Orange, was found guilty of theft by deception and Medicaid fraud by an Essex County jury. The evidence presented at trial showed he defrauded the Medicaid Program of more than \$167,000 by submitting claims to the Medicaid Program for prescriptions he knew were forged. The corporate defendant, Quicksript Pharmacy, was also found guilty of theft by deception and Medicaid fraud. Sentencing is pending for both defendants.

Matthew Faenza, a registered pharmacist and the owner of McDermott's Pharmacy in Paterson, was sentenced to four years in State prison. This followed his guilty plea to an Accusation which charged him with one count of health care claims fraud. He admitted billing the Medicaid Program for dispensing an expensive anti-AIDS medication, Serostim, to Medicaid beneficiaries when, in fact, he did not dispense the medications. At the time of sentencing, Faenza paid \$450,000 in restitution to the Medicaid Program.

Michael Pacheco, a pharmacy technician and employee of McDermott's Pharmacy, was sentenced to two years probation following his guilty plea to an accusation charging him with Medicaid fraud. He admitted he assisted his employer, Matthew Faenza, in submitting claims for prescriptions that were not dispensed.

The State Grand Jury returned an indictment charging **Shahid Khawaja**, **Dr. Axat Jani**, **Milton Barasch**, a registered pharmacist, and **Azam Khan** with conspiracy and theft by deception for their submission of more than \$293,815 in false claims to the Medic-



Pharmacy shelves labeled as evidence by OIFP State Investigators in a criminal investigation.

aid Program. All of the defendants have pled guilty with the exception of Khawaja, who is pending trial.

Milton Barasch, a registered pharmacist, pled guilty to one count of an indictment which charged him with health care claims fraud. He admitted that while employed as a pharmacist at S. Brothers Pharmacy in Newark, New Jersey, he facilitated others in submitting claims to the Medicaid Program that were based on forged prescriptions. His sentencing is pending.

Azam Khan, an employee of S. Brothers Pharmacy in Newark, New Jersey, pled guilty to one count of an indictment which charged him with health care claims fraud. He admitted that he participated in a scheme to submit claims to the Medicaid Program that were based on forged prescriptions. His sentence is pending. Both he and



Pharmacy Scams Busted

Milton Barasch admitted that they billed the Medicaid Program for more than \$293,815 for medications that were not dispensed.

Dr. **Axat Jani** pled guilty to one count of an indictment charging him with health care claims fraud. He had been charged along with Milton Barasch, Azam Khan and Shahid Khawaja, the owner of S. Brothers Pharmacy. At his guilty plea hearing, Jani admitted that he wrote false prescriptions in the names of Medicaid beneficiaries who had visited his clinic in Newark. He sold those prescriptions and the Medicaid beneficiaries' identification numbers to Khawaja and Barasch. His sentencing is pending.

A registered pharmacist, **Kenneth Horowitz**, pled guilty to an accusation which charged him with Medicaid fraud. He admitted that he and another registered pharmacist, Nino Paradiso, the owner of Singac Pharmacy and Surgical Supply, submitted more than \$35,000 in false claims to the Medicaid Program. His sentencing is pending.

The State Grand Jury returned an indictment charging **Nino Paradiso**, a registered pharmacist and the owner of Singac Pharmacy and Surgical Supply, with health care claims fraud and Medicaid fraud. It was alleged that Paradiso and his co-conspirator, Horowitz, submitted 103 false claims to the Medicaid Program and received \$35,000 they were not entitled to. Paradiso and Singac Pharmacy's trials are pending.

A corporate defendant, **RX Pharmacy, Inc.**, formerly located in Jersey City, pled guilty to a one count Accusation which charged the corporation with Medicaid fraud. At the guilty plea hearing, a corporate representative admitted that false claims totaling more than \$18,506 were submitted through RX to the Medicaid Program.

The State Grand Jury returned an indictment which charged **Michael Stavitski**, a registered pharmacist, with submitting more than \$1.3 million in false claims to the Medicaid Program. The State Grand Jury also charged four corporate defendants, pharmacies that Stavitski owned. They are Belmar Home-town Pharmacy in Belmar, Wall Pharmacy in Wall Township, Avon Pharmacy in Avon by the Sea, and Spring Lake Heights Pharmacy in Spring Lake Heights. Stavitski and the other defendants pled guilty to second degree health care claims fraud.

Howard Williams III of Jersey City was sentenced to four years in State prison and ordered to pay \$75,388 in restitution to the Medicaid Program. He admitted that he submitted forged prescriptions to several Hudson County pharmacies using other persons' Medicaid cards and received expensive medications which he sold on the street.

Other examples of remedial actions undertaken by OIFP's Medicaid Fraud Section in 2003 included cases where:

The Medicaid Fraud Section participated in a multi-state and federal settlement with Pfizer, Inc. Our State received \$1.2 million dollars based on a violation of the "best price" requirement of the federal Medicaid drug rebate statute. Pfizer's liability was based on its acquisition of Warner-Lambert, the developer of Lipitor. The violations occurred prior to Pfizer's purchase of Warner-Lambert.

The Medicaid Fraud Section participated in a national settlement with Lifescan, Inc. Lifescan manufactures and sells blood glucose monitors and test strips. Food and Drug Administration statutes were violated by Lifescan through the marketing of an adulterated and mis-branded medical device. Our State recovered \$293,282.40 in restitution and false claims penalties.

Additional case summaries involving criminal prosecutions and civil lawsuits undertaken by the Medicaid Fraud Section in 2003 are set forth in the Case Highlights Section of this report.

John Krayniak is a 16 year veteran of the Division of Criminal Justice and has been the Supervising Deputy Attorney General of OIFP's Medicaid Fraud Section for ten years. He previously served for eight years as a Deputy District Attorney in the Los Angeles County District Attorney's Office.